

If a purchase order for the sale of tangible personal property is accepted in a jurisdiction in

See 86 Ill. Adm. Code 270.115.

June 18, 2001

Xxxxx:

<http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letters of April 2, 2001 and June 11, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to THE TAXPAYER for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither THE TAXPAYER nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter of April 2, 2001, you have stated and made inquiry as follows:

This request for a Private Letter Ruling is made on behalf of our client, hereinafter 'The Taxpayer', and requests rulings that all three sales order acceptance procedures detailed below result in the sale being sourced to CITY, Illinois for purposes of the Municipal Retailer's Occupation Tax. Neither an audit nor litigation is pending with the Illinois Department of Revenue (hereinafter 'Department') involving the Taxpayer or the issues presented below. To the best of our knowledge and that of the Taxpayer, (1) the Department has not previously ruled on the same or similar issues presented below for the Taxpayer or a predecessor; and (2) neither the Taxpayer nor any representative of the Taxpayer has previously submitted the same or similar issues to those presented below to the Department but withdrew them before a letter ruling was issued.

## **STATEMENT OF FACTS**

The Taxpayer sells computers and computer accessories throughout Illinois via telephone sales representatives who make outbound calls and handle inbound calls from customers, and calls generated from catalog and Internet sales. The Illinois sales representatives are based in CITY1, CITY2 and CITY, the Taxpayer's corporate headquarters. The order process is completely automated and each sales representative, regardless of location, inputs the order into a computer system where the order is routed to CITY for processing. All invoices are then generated at the CITY location. The Taxpayer uses three methods to approve sales orders.

Method 1

Phone contact is made between the sales representative and the customer. If the customer wants to place an order, the sales representative enters the information into the Taxpayer's computer system. The information is sent to the CITY location where a computer check is conducted to ensure that the particular sale meets the Taxpayer's requirements. If the order is within the salesperson's limit (a per order limit set by the Taxpayer and generally based upon the individual's length of employment) and the customer's credit limit, the sale passes the computer check. The sale is then sent to the Taxpayer's credit department, also located in CITY, where the credit department examines the order and can either release it or investigate further. If the sale is accepted, the merchandise is shipped from CITY and an invoice is then generated by a computer, also located in CITY.

#### Method 2

Again, phone contact is made between the sales representative and the customer. If the customer is paying by credit card, certified check or other cash based payment, the sales order is approved over the phone by a sales manager. Under this method, a sales representative calls into a help desk, which locates the sales manager on duty to approve the sale. The sales manager could be located anywhere at the time, as the Taxpayer rotates the duty on an hourly basis. Within a given day the sales manager on duty that hour could be located in CITY1, CITY2, or CITY. After the sales manager approves an order, the sales representative inputs the order into a computer system that routes the order to CITY for processing and the production of an invoice.

#### Method 3

Phone contact is made between the sales representative and the customer. Where the customer is new or seeks to place an order exceeding its current credit limit, the order is taken by the sales representative and transferred to the Accounts Receivable Department (consisting of both the credit and collections groups) in CITY. The credit group manually reviews the sales request, and if it determines to offer new or additional credit, the order is accepted. After approval, the order is entered into the CITY computer system, which causes the order to be shipped from the Taxpayer's CITY warehouse and generates an invoice.

### **RULINGS REQUESTED**

- I. The Taxpayer's acceptance of sales orders takes place in CITY under all three methods, and thus the Taxpayer's sales should be sourced to the CITY location for purposes of the Municipal Retailers Occupation Tax.

### **RELEVANT AUTHORITY**

Illinois Regulation, 86 Ill. Adm. Code 270.115 **Jurisdictional Questions**

(a) *Mere Solicitation of Orders Not Doing Business:* (1) For a seller to incur Home Rule Municipal Retailers' Occupation Tax liability in a given home rule municipality, the sale must be made in the course of such seller's engaging in the retail business within such municipality. In other words, enough of the selling activity must occur within the home

rule municipality to justify concluding that the seller is engaged in business within the home rule municipality with respect to that sale.

(2) For example, the Supreme Court has held the mere solicitation and receipt of orders within a taxing jurisdiction (the State), where such orders were subject to acceptance outside the taxing jurisdiction and title passed outside such jurisdiction, with the goods being shipped from outside such jurisdiction to the purchaser in such jurisdiction, did not constitute engaging in the business of selling within such jurisdiction. This conclusion was reached independently of any question of interstate commerce and so would apply to a home rule municipality as the taxing jurisdiction as much as to the State as the taxing jurisdiction.

(b) *Seller's Acceptance of Order:* (1) Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of Sections (f) and (g) of this Section, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the home rule municipality or by someone working out of such place of business, the seller incurs Home Rule Municipal Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.

(2) The Department will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary.

(3) If a purchase order is accepted outside this State but the tangible personal property which is sold is in an inventory of the retailer located within a home rule municipality at the time of its sale (or is subsequently produced in the home rule municipality), then delivered in Illinois to the purchaser, the place where the property is located at the time of the sale (or subsequent production in Illinois) will determine where the seller is engaged in business for Home Rule Municipal Retailers' Occupation Tax purposes with respect to such sale.

General Information Letter, ST 98-0090 (March 24, 1998)

States in the Department's response to taxpayer, 'In situations where an order originally placed at one location is processed and accepted at a second location where the credit card information is accepted, and the sales invoice or other paperwork is generated, the tax rate of the second location would apply. However, if all the sales order processing steps, including making payment, sales receipt preparation, etc., is done at the first location so that order acceptance occurs there, although the property being sold is located at another location, the fact that order acceptance occurs at the first location means its tax rate (including locals) would apply'.

## **DISCUSSION**

**I. The Taxpayer's sales under all three methods above should be sourced to the CITY location for purposes of the Municipal Retailers Occupation Tax.**

The Municipal Retailers Occupation Tax applies to a transaction at the location where the taxpayer engages in selling. In determining where 'selling' occurs, Illinois Regulation, 86 Ill. Adm. Code 270.115(b)(1), offers guidance as to where a seller is deemed to accept an order, and states in part 'the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling.'

**The Taxpayer's first method for sales order acceptance meets the Department's criteria set forth above for sourcing sales to CITY**

While orders are taken at any of three locations, the final steps of acceptance take place in CITY. These final steps include 1) a computer check to verify that an order is within the sales representative's limit and the customer's credit limit; 2) an optional manual check by the credit collection group to verify the order is satisfactory; and 3) the generation of an invoice for all approved orders. The Taxpayer sets strict limits regarding customer credit and acceptance authority levels for sales representatives. These limits are set at the Taxpayer's headquarters in CITY, and no sale will be accepted without approval from employees and/or the computer system located at that facility. Once approved, the orders are routed to CITY where the orders are processed and sales invoices are generated. Thus the sale should be sourced to CITY, where the order is approved and accepted for MROT purposes, based upon *Illinois Regulation, 86 Illinois Administrative Code 270.115(b)(1)*, which states 'if the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business...the seller incurs Home Rule Municipal Retailers' Occupation Tax liability in that municipality...'

**Sales under the second acceptance method are properly sourced to CITY**

While orders are taken at any of three locations, in every instance the final step takes place in CITY. This final step is the generation of an invoice for all approved orders. *ST 98-0090* offers guidance for this situation, stating 'In situations where an order originally placed at one location is processed and accepted at a second location where... the sales invoice or other paperwork is generated, the tax rate of the second location would apply.' Under this method, after an order is approved by the sales manager at an undetermined location, the sales representative inputs the order into a computer system that routes the order to CITY for processing and invoice generation. Based upon the criteria set forth in *ST 98-0090* above, since the invoice is generated in CITY, the sale should be sourced to CITY for MROT purposes.

**The Taxpayer's third sales acceptance method meets the Department's criteria for sourcing sales to CITY**

While orders are taken at any of three locations, the final steps of order acceptance take place in CITY. These final steps include 1) a manual determination by the credit collections group to accept or reject the order; and 2) the generation of an invoice for all approved orders. All approval activity takes place at the CITY location under this method. Here, the sales representatives have no authority to approve orders, their only function is phone contact with the customer, after which they merely forward the

customer's request and information to CITY for processing. New or existing customers' information is evaluated by the credit collection center in CITY, where their credit is verified and approved, after which the sales order is accepted by the center. Upon acceptance of the order the computer system located in CITY processes the order and generates an invoice. Applying *Illinois Regulation, 86 Illinois Administrative Code 270.115(b)(1)*, which states 'if the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business...the seller incurs Home Rule Municipal Retailers' Occupation Tax liability in that municipality...', these sales are properly sourced to CITY, the location at which the purchase order is accepted by the Taxpayer.

## CONCLUSION

The Taxpayer's acceptance of sales orders, as determined by the criteria set forth in *ST 98-0090* and *Illinois Regulation, 86 Illinois Administrative Code 270.115*, takes place in CITY under all three methods, and thus the Taxpayer's sales should be sourced to the CITY location for purposes of the Municipal Retailers Occupation Tax.

Enclosed is a Power of Attorney authorizing us to represent the Taxpayer in this matter. Please contact me if you have any questions or require additional information.

In your letter of June 11, 2001, you have stated as follows:

The purpose of this letter is to supplement the attached request for a Private Letter Ruling which was submitted on April 2, 2001 on behalf of our client, THE TAXPAYER (hereinafter "The Taxpayer"). The letter requested rulings that all three sales order acceptance procedures would result in the sales being sourced to CITY, Illinois for purposes of the Municipal Retailer's Occupation Tax.

As PERSON explained in your phone conversation of May 30, 2001 the acceptance procedure set forth in Method 2 has been changed as of April 2, 2001. Previously, Method 2 was described as follows:

Phone contact is made between the sales representative and the customer. If the customer is paying by credit card, certified check or other cash based payment, the sales order is approved over the phone by a sales manager. Under this method, a sales representative calls into a help desk, which locates the sales manager on duty to approve the sale. The sales manager could be located anywhere at the time, as the Taxpayer rotates the duty on an hourly basis. Within a given day the sales manager on duty that hour could be located in CITY1, CITY2, or CITY. After the sales manager approves an order, the sales representative inputs the order into a computer system that routes the order to CITY for processing and the production of an invoice.

As of April 2, 2001, Method 2 is now described as follows (changes are shown in italics):

Phone contact is made between the sales representative and the customer. If the customer is paying by credit card, certified check or other cash based payment, *the sales representative calls into a help desk, which locates the sales manager on duty to check the limits with respect to the sale.* The sales manager could be located anywhere at the time, as the Taxpayer rotates the duty on an hourly basis. *After the sales manager finishes checking an order, the order is then sent to the Taxpayer's credit department, located in CITY, where the credit department examines the order and can either release it or investigate it further. After approval by the credit department, the merchandise is shipped from CITY and an invoice is then generated by a computer, also located in CITY.*

### **Taxpayer's Conclusion**

The taxpayer's acceptance of sales orders under Method 2 (applicable through April 1, 2001), as determined by the criteria set forth in ST 98-0090 and Illinois Regulation, 86 Ill. Adm. Code Section 270.115, takes place in either CITY1, CITY2, or CITY and thus the Taxpayer's sales should be sourced to whichever location the sales manager on duty is located at the time of approval for purposes of the Municipal Retailers' Occupation Tax.

The Taxpayer's acceptance of sales orders, as determined by the criteria set forth in ST 98-0090 and Illinois Regulation, 86 Ill. Adm. Code Section 270.115, takes place in CITY under Method 2 (applicable as of April 2, 2001) and thus the Taxpayer's sales should be sourced to the CITY location for purposes of the Municipal Retailers' Occupation Tax.

If you have any questions, please contact me.

### **DEPARTMENT'S RESPONSE:**

If a purchase order for the sale of tangible personal property is accepted in a jurisdiction in Illinois that imposes a local retailers' occupation tax, that local tax will be incurred on that sale. See for example the enclosed copy of 86 Ill. Adm. Code 270.115 regarding Home Rule Municipal Occupation Taxes.

In the first method (Method 1) described in your letter, the credit department at the CITY location of THE TAXPAYER 'examines the order and can either release it or investigate further.' We believe that the order acceptance takes place at the credit department located in CITY, Illinois. Therefore, the sales described in Method 1 of your letter would be 'sourced' or subject to any local taxes imposed in CITY, Illinois.

In Method 2 described in your letter for periods before April 2, 2001, you state that the sales manager on duty approves those sales. We understand that there is more than one sales manager and those managers work out of either the CITY1, CITY2, or CITY offices. Depending upon when a call is received, any one of those sales managers in any of those locations may be the one to approve that sale. We believe that a sale described in Method 2 of your letter would be subject to any local taxes imposed at the location where the sales manager's office was located when he or she approved the sale at that office. For example, if the sale order was approved by a sales manager that was located in THE TAXPAYER's CITY1 office, that sale would be subject to any local taxes

imposed by the CITY1. Sending the order to the CITY office for processing and the production of an invoice after the sales manager approves the sale does not change the fact that the order was already accepted by a sales manager who may be working out of another local jurisdiction.

Your letter references General Information Letter ST-98-0090 as support for your proposition that the processing of the order and invoice generation in CITY should control for local tax sourcing. We do not believe that the provisions you quoted of this letter ruling are applicable to your situation because the facts in ST-98-0090 are different from the situation you described in Method 2 for periods before April 2, 2001. The provisions you quoted in ST-98-0090 concern how a sale is sourced when the order approval occurs at an undetermined location. In the scenario set out in Method 2 for periods before April 2, 2001, the sales manager would be located at three different potential, but determinable, locations depending upon what time the approval is granted e.g., CITY1, CITY2, or CITY. Therefore, for sales under Method 2 that occurred prior to April 2, 2001, the approval by the sales manager will occur at a determined location depending upon when the approval is granted and the sales will be sourced to those corresponding locations.

In Method 2 described in your letter for April 2, 2001 and thereafter, the sales manager does not have final approval or disapproval of the order. Your letter states that, for April 2, 2001 and thereafter, the credit department located in CITY, Illinois examines the order after the sales manager and the credit department either releases the order or investigates it further. Your letter then states that, "[a]fter approval by the credit department, the merchandise is then shipped from CITY and an invoice is then generated by a computer, also located in CITY. Based on this information, the order acceptance for orders taken under Method 2 beginning April 2, 2001 takes place in CITY, and those sales are subject to any local taxes imposed in CITY, Illinois.

In Method 3 described in your letter, the Accounts Receivable Department (credit group) located in CITY reviews the sales request and accepts or rejects the order. We believe that the sales described in Method 3 are subject to any local taxes imposed in CITY, Illinois.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have questions regarding this Private Letter Ruling you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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